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The Human Right of Communication

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NOTES

THE HUMAN RIGHT OF COMMUNICATION*

I. GLOBAL COMMUNICATION PROCESS

Communication is intercourse among people; speaking, writing or sending a television signal are but three of its many forms. This definition, however, inadequately describes the role which communication plays on a global scale. One can go so far as to say that communication is the motor and expression of social activity; it maintains and animates life.¹ Communication performs the task of integrating knowledge so that human beings can become interdependent. Communication links all parts of the world together.

History has witnessed the rapid expansion of communication.² In the Stone Age, communication was limited to small groups of people within earshot or, at best, within eyeshot of each other. Since that time, however, as alphabets and literacy came into existence, communication has expanded. With the movement of peoples through Asia Minor and into Europe and with the consequent development of language, communication spread. By modern times, as literacy grew from the possession of a minority to the possession of a majority, communication was opened to a majority of the world's population. It became a global process. In short, communication has developed away from elitism towards greater democratization. The most recent decades have seen significant advances in technology which have tightened the global hold of communication. The problem in light of these developments is "to open up the opportunities which exist in principle but are still denied to the majority of the world's population."³

Communication fulfills several distinct functions.⁴ The broad scope of these functions makes immediately clear the importance of the problem of expanding communication. The first two func-

* This note is also scheduled for publication in the *REVUE DE DROIT INTERNATIONAL*, which retains all European rights thereto.

1. UNESCO, Report by the International Commission for the Study of Communications Problems, *MANY VOICES, ONE WORLD* 3 (1980) [hereinafter cited as *MACBRIDE REPORT*].

2. *Id.* at 3-13.

3. *Id.* at 13.

4. *Id.* at 14.

tions—collecting, storing and processing of information; and filling a social need by providing a common fund of knowledge in order to improve social cohesion—are apparent from the definition of communication. Communication's functions are also linked to the eight value processes outlined by Professor Myres S. McDougal.⁵ Communication is a political instrument through which issues are debated and public interest is generated; it is, therefore, closely tied to power. As an economic resource like natural raw materials, communication is a form of wealth or, at least, can create the information which leads to wealth. It serves an obvious educational or enlightenment function as well. By promoting culture, in attempting to preserve a past heritage and to broaden future horizons, communication entails affection for other members of a society. Communication can improve well-being by acting as a conduit for advances in health care. As it disseminates both entertainment and messages about ethical behavior (though the two need not be mutually exclusive), it increases a community's attachment to rectitude. Because communication serves an integrative purpose as it strives to give all social groups an opportunity for access to each other, it enhances respect. In this sense, respect can be considered the core value for communication. Recent discussion, however, deals with "conceptualization of information issues in political-economic terms"⁶ and thus suggests power as the base value for communication. Clearly, power is needed in the form of access to information-gathering and information-disseminating bodies in order to participate in the global communication process. Communication is the means through which ideas flow and perspectives change; it is the carrier of ideas about values and is, therefore, central to any community process based on the shaping and sharing of values. People can have ideas regarding values, however, only if they have been enlightened. From this perspective, therefore, enlightenment is a base value for communication.

5. M. McDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* 85 (1980). The eight values are as follows:

Respect: Freedom of choice, equality and recognition

Power: Making and influencing community decisions

Enlightenment: Gathering, processing, and disseminating information and knowledge

Well-being: Safety, health, and comfort

Wealth: Production, distribution, and consumption of goods and services; control of resources

Skill: Acquisition and exercise of capabilities in vocations, professions, and the arts

Affection: Intimacy, friendship, loyalty; positive sentiments

Rectitude: Participation in forming and applying norms of responsible conduct

Id.

6. O'Brien & Helleiner, *The Political Economy of Information in a Changing International Economic Order*, 34 INT'L ORG. 470 (1980).

This discussion shows that more than one value can be considered as core in the global communication process. At times these values conflict. For example, in order to maintain its position, a power elite may try to deprive others of the right to enlightenment. Conversely, those people who are enlightened, such as academicians, may be far from power and may even be actively excluded therefrom.

In recent years, nations and their leaders have come to realize that communication and its product, information, lie "at the root of sovereignty."⁷ This recognition arose as "the inevitability of domination [which] is . . . built into the Western conception of the world"⁸ became more apparent in the minds of non-Western leaders. They have increasingly raised questions concerning why some forms of history-writing should be considered "news" or why those standards of veracity which they believe were originally set by the West are now globally held.⁹ The free flow of information which they see as having been established by the West as an ideal in fact "merely swamps the culture of others."¹⁰ In short, they fear that communication may have brought the non-Western countries¹¹ into a condition of cultural dependence on the West. This dependence manifests itself in, for instance, book publishing, tourism and the sale of communication equipment from the First to the Third World.

Developments in communication technology have aggravated the cultural dependence problem. Among these advances are satellite and computer technology which accelerate the flow of information. This technology has made information to the West what certain natural resources, such as oil or minerals, are to the South. Because of the new tools of communication, information has become "a social resource of a special kind, rather than a produced commodity."¹² To use Blacking's model, information is the product of the process of communication.¹³

7. A. SMITH, *THE GEOPOLITICS OF INFORMATION: HOW WESTERN CULTURE DOMINATES THE WORLD* 58 (1980).

8. *Id.* at 24.

9. *Id.* at 22.

10. *Id.* at 37.

11. For expositional purposes, nations known as the "non-West," South, Third World or Lesser Developed Countries hereinafter will be collectively referred to as the Third World in this note. The groups of countries making up the North, West and First World will be collectively referred to as the West. These are concededly gross oversimplifications, but for the purpose of discussing the world communication debate, it is sufficient to use the above terminology. This caveat is occasionally ignored in the text when greater specificity is required.

12. A. SMITH, *supra* note 7, at 114.

13. Inaugural Lecture by Professor John Blacking, University of the Witwatersrand Johannesburg, *Process and Product in Human Society* (September 13, 1967). The Black-

The Third World therefore may not have a legitimate grievance with the West. Communication is just an example of how more rapid developments in Western culture regarding communication have made its product, information, Western-dominated; no Western will to dominate is implied. This caveat raises questions about the cultural dependence argument but does not destroy it entirely. One product of culture—information—serves to permit the processes of one culture to dominate the processes of other cultures.

Another objection to the cultural dependence argument is the opinion that the Third World is protesting not against Western norms but against accepted international norms which were codified in bodies with legitimate power to make international law. For instance, the right to "receive and impart information and ideas through any media and regardless of frontiers"¹⁴ is guaranteed by the United Nations. This right is also a summary of the free flow argument against which the South vehemently protests. Nonetheless, the South today would strongly uphold the right of the United Nations to make international law. The South may, however, contend that at the time when the Universal Declaration of Human Rights¹⁵ was signed, the U.N. was not a legitimate legislative body because the West so completely dominated it. The notion that human rights can change in varying social contexts would support the Southern view. The changed social order of the 1970's opens room for questioning rights agreed upon in a social order of the 1940's when the West predominated.

The right to communication is part of the new era or generation of human rights. The first generation included civil and political rights; the second, economic, social and cultural rights; the third, planetary concerns which have taken on "a renewed urgency."¹⁶ This new set of rights, which includes communication, is of both a collective and individual nature, and synthesizes existing rights with new ideas. While the notion of a new era of rights is exciting and places communication problems at the cutting edge of international law, it should be recognized that some hostility toward this idea exists. In particular, some

ing model purports that there is a clear distinction between the product of Man and the process of Man. The product of Man is the result of cultural and technological developments. The process of Man focuses on the human or moral development of Man (i.e., what makes Man "Man"). *Id.*

14. U.N. Universal Declaration of Human Rights, G.A. Res. 217(III), U.N. Doc. A/810, at 71 (1948).

15. *Id.*

16. Marks, *Emerging Human Rights: A New Generation*, 33 *RUTGERS L.J.* 435, 440 (1981).

people feel that if claims or values are "indiscriminately proclaimed"¹⁷ as human rights, the whole conception of what constitutes human rights will be trivialized.

The dynamic nature of human rights and of overall development responds to this complaint. Human rights can change or expand as social contexts change. The social order of today differs from that of sixty years ago and certainly from that of two hundred years ago. More people are now considered legitimate actors in the social process. The right to inform and to be informed, therefore, in a world of ever-growing and ever-changing actors, should be viewed as a legitimate human right. While the existence of philosophical debate over the legitimacy of communication as a human right should be noted, such debate is beyond the scope of this note. For present purposes, it will be assumed that the right to communicate is a legitimate human right.

II. CLAIMS TO COMMUNICATION AND INFORMATION

The present analysis of communication will proceed on the basis of the McDougal model, which contends that human rights are a result of the shaping and sharing of values.¹⁸ This model places great emphasis on the presence of a human rights facet in all human interactions, most certainly including communication. McDougal posits the existence of a set of universal values, evinced by the international bill of human rights, among which respect lies at the core. All human beings, according to McDougal, are entitled to respect. Values are oriented to the individual, and McDougal insists on developing human rights from the point of view of the individual rather than of the larger actors, such as nation-states.¹⁹

This view is distinct from what can be referred to as the Soviet conception of human rights, which sees these rights as opportunities granted by the state rather than as an individual's claims on the state.²⁰ The Soviets emphasize the educational role these rights play in the transformation of the New Soviet Man. While civil and political rights lie at the heart of most Western conceptions of human rights, collective economic rights, most notably the right to work, are at the base of the Soviet conception. Only through the collective, according to Soviet jurists, can the individual attain his full potential; his rights must therefore be linked to those of the collective. Accordingly, the

17. *Id.* at 451.

18. M. McDOUGAL, H. LASSWELL & L. CHEN, *supra* note 5, at 84.

19. *Id.*

20. Dean, *Beyond Helsinki: The Soviet View of Human Rights in International Law*, 21 VA. J. INT'L L. 55, 75 (1980).

Soviets can justify restrictions on the right to communication by saying that the individual's freedom to communicate may prejudice the rights of society as a whole.²¹ The Soviets avoid the problems posed by the fact that they are signatories to various international documents which uphold freedom to communicate, by their doctrine which maintains that states, not individuals, are the subjects of international law; implementation means "adjusting international norms to be consistent with the social, economic, and political characteristics of the Soviet Union."²² The Soviet State and not international agreements create, define and implement the rights of the Soviet people.

Because the premise of this note is that freedom to communicate is a legitimate and basic human right, it would be pointless to work with the Soviet model if one bears in mind that the purpose of the model is designative, rather than preferential. Such a framework justifies enough restraints on communication as to question whether individuals should be free to inform and to be informed. On the other hand, the policy-oriented approach of McDougal,²³ by virtue of its conception of eight core values, several of which are basic to the right to communicate, strongly supports the individual's freedom of expression and discussion. Additionally, because it emphasizes the rights of the individual rather than the rights of the state, it necessarily is more sympathetic than the Soviet approach, which advances the individual's freedom only at the expense of the state. Using the McDougal framework, then, one notes alleged deprivations which have occurred in the shaping and sharing of values in the global communication process. These nonfulfillments have led to the particular claims embodied in the New International Information Order (NIIO).

Before a systematic treatment of these claims is attempted, it would be useful to list some of the factors which have convinced those members of the Third World responsible for the NIIO to make their claims.²⁴ The unmistakably growing world interdependence, especially as manifested in the expanding role of communication, underlies any claim for a new sense of sovereignty in the South as former colonies gained their independence. Independence has made these new states feel more self-sufficient. Consequently, they resent outside (particularly Western) interference in their internal affairs. Related to this new

21. *Id.*

22. *Id.* at 76.

23. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 5, at 85.

24. Richstad & Anderson, *Policy Context for News and a New Order*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 9, 17-20 (J. Richstad & M. Anderson eds. 1981).

sovereignty is the wider focus on ideas of dominance and dependence.²⁵ The new communication technology and the simultaneous rise in concern about the impact of technology on national development may have provided the impetus for finally voicing claims for a new order.

Despite the interdependence of value processes, it would be easiest to treat the NIIO claims first as they relate to the deprivation of enlightenment and later as they relate to wealth and the other values. This note will discuss the alleged deprivations and associated claims as they refer to each of the six institutional factors. One should remember, however, that these nonfulfillments and claims can also be interpreted in terms of power or respect. In fact, the three base values overlap to a large degree in the NIIO proposals and are sometimes difficult to separate.

NIIO proponents claim that "a flagrant quantitative imbalance between North and South"²⁶ in communication currently exists. "Almost 80 percent of the world news flow emanates from the major transnational agencies; . . . This results in a veritable de facto monopoly on the part of the developed countries."²⁷ Consequently, the NIIO is making a claim for increasing the number of Third World participants in the communication process in order to democratize it further as a means to improve Third World enlightenment. This is not a demand to increase the absolute number of participants in global communication; such a result, according to the NIIO, would merely increase Western dominance. Rather, it is a desire to add to the Third World's share in the communication process.

The NIIO's broadest claims lie perhaps in regard to perspectives. It sees the West possessing "a de facto hegemony and a will to dominate"²⁸ which manifests itself in "the indifference of the media in the developed countries, particularly in the West, to the problems, concerns, and aspirations of the developing countries."²⁹ These biased perspectives of Western journalists become apparent in the news sent from the Third World which reflects the "survival of the colonial era."³⁰ The NIIO's proponents argue that Western coverage of Third World events concentrates on natural and political disasters and not on "development news" which would, for example, describe current advances in schooling or health care. In the Third World view, such news would expand enlightenment. The West's perspective on which events

25. *Id.* at 10.

26. Masmoudi, *The New World Information Order*, 29 J. Com. 172 (1979).

27. *Id.* at 172-73.

28. *Id.* at 173.

29. *Id.*

30. *Id.* at 174.

make up "news" is thus the subject of the NIIO's severe criticism.

The NIIO also makes claims relating to situations of enlightenment. Because much of the news received in the Third World is actually transmitted from broadcasting centers in the West and is, for that reason, edited to meet the needs of Western audiences, "messages [are] ill-suited to the areas in which they are disseminated."³¹ Western mass media coverage "disregards the impact of the news beyond [its] own frontiers. They even ignore the important minorities and foreign communities living on their national territory. . . ."³² The NIIO, therefore, makes claims to constitute and advance its own institutions of enlightenment such as regional and national news agencies. The issue of crisis situations is tied to the NIIO claims that too often Western reportage depicts the Third World's crises and not its accomplishments. A secondary claim in this regard is that in times of crisis in the West, news of the Third World is completely disregarded. Underlying these claims seems to be the belief that the West is the locus of all international action. It is possible to conclude that the Third World is simply voicing an inferiority complex, but that conclusion is suspect in light of the quantitative dominance of the West in information transmission.

The claims of the NIIO with regard to the authority and control over enlightenment as a base value are perhaps the most controversial claims of all. Because of what they perceive as biased reporting, Third World governments are demanding the right to limit the flow of information to that which, in their view, does not portray them in an unfair or, as Western critics would say, negative light. This claim clearly has serious consequences for Western standards involving freedom of the press and the rights of journalists as investigative reporters even when their findings are harmful to the subjects of their inquiry. Tied to the claim for control is the demand for help from the West in setting up national news agencies which would tend to portray the Third World nation-state more favorably than would Western reporters. The South's specific complaint about the "ineffectiveness of the right of correction"³³ relates as well to its demand for greater control over the means to enlightenment so that the "errors" would not have occurred in the first place.

The central question involving strategies relates to "[c]laims for freedom in access to and employment of mass communication."³⁴ The NIIO supporters claim that "[a]n inequality in information resources"

31. *Id.*

32. *Id.* at 175.

33. *Id.*

34. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 5, at 152.

exists because "[t]he five major transnational agencies monopolize between them the essential share of material and human potential."³⁵ These inequities are also present in the broadcast spectra. Consequently, the Third World feels unable to promote its views on communication and to present the news as it sees it. In the field of information, where the ideological strategy is so important, the South feels that this very strategy is closed to it.

The NIIO claims with regard to outcomes include all the claims heretofore mentioned. Suffice it to say that the outcome the NIIO proponents desire would bring about a controlled flow of information where, at the very least, more information than at present would be favorable to the Third World. Such a controlled flow would theoretically improve enlightenment by giving people a "truer" version of the news. It would increase their power by channeling information narrowly, and would foster respect by giving all people the same information drawn from a limited number of sources.

Although the rhetoric of some of these claims is excessively harsh, each claim has a kernel of legitimacy insofar as it is made in regard to true cultural dependence. True cultural dependence is dependence on uniquely Western values or institutions, but not dependence on international norms confused with Western norms. An example of true cultural dependence is Western numerical predominance among the participants in the communication process; this dominance necessarily means that the press coverage of the Third World will have a Western slant. Similarly, the claim to de facto Western hegemony is legitimate to the extent that this hegemony encourages or maintains the Third World's dependence on the West for its news. It is no longer clear that the West consciously intends cultural domination over the Third World. The West has good reason not to aggravate its problems with the Third World because it depends on the Third World for many of its natural resources. Any obvious attempts to dominate increase the risk of cutting off that supply. The de facto hegemony does not automatically imply a will to dominate.

Thus far, this note has considered the NIIO claims primarily in regard to enlightenment. However, as Professor McDougal cogently argues, all eight values are interdependent.³⁶ The NIIO recognizes the particular interdependence of enlightenment and wealth. Advocates of the NIIO believe that: "The establishment of a new world information order must be considered the essential corollary of the new interna-

35. Masmoudi, *supra* note 26, at 173.

36. M. McDougal, H. LASSWELL & L. CHEN, *supra* note 5, at 84-85.

tional economic order."³⁷ While NIIO supporters claim that this linkage is apparent, other people have seriously disagreed. "The New World Information Order is another vehicle and/or attempt by the Third World to use diplomatic and ideological strategies to obtain a decision-making role in the market economy via the telecommunications industry."³⁸ The linkage may be no more than a ploy by Third World leaders for more development assistance. Doubt centers on whether the Third World actively supports the expansion of enlightenment or whether it simply wants to use enlightenment as means to gain financial support to keep existing power elites in control.

Even if the New International Economic Order (NIEO) is understood as a claim for distributive justice, the means it suggests towards achieving that goal are exclusively economic and rest largely on the value of wealth. Although wealth is the base value in NIEO, other base values, such as power or respect, exist in NIEO. But to the extent that wealth is a base value, the NIIO/NIEO linkage is suspicious. It is impossible to be certain that wealth will be used to better the well-being of Third World residents and not to solidify the position of power elites and thus prevent distributive justice within and among the nations demanding NIEO. If power is the base value, then, the NIIO/NIEO combination risks still more than either of the orders alone: the continuation of oppressive governments in parts of the Third World.

It should be determined whether the NIIO claims as a whole are too narrow. The question arises as to why NIIO supporters draw a connection only between enlightenment (or respect or power) and wealth. The NIIO proposals largely neglect the other values. One wonders whether Mustapha Masmoudi, formerly Tunisian Secretary of State for Information and currently Ambassador to UNESCO,³⁹ and the other proponents of the NIIO limit their interdependence to wealth alone because they fear that claims based on other interdependences would unmask the weak human rights record of many Third World states. The demand for wealth illustrates the current existence of poverty; this condition is not a source of shame, and is often ironically considered reason for pride. On the other hand, tying demands for communication and enlightenment to a demand for wider religious toleration (i.e. broader shaping and sharing of rectitude) would show that presently freedom of religion is not the norm in those states making the claims. Religious intolerance is the fault of the home government,

37. Masmoudi, *supra* note 26, at 185.

38. M. Groeschel, *The International Information Order: Diplomatic and Ideological Strategies of the Third World and/or Nonaligned Countries to Achieve the Goals of the New International Economic Order 1* (March 16, 1982) (unpublished manuscript).

39. Masmoudi, *supra* note 26, at 172.

not of the West. Communication could also be used to spread information about medical care and well-being. This might conflict with existing cultural traditions which do not lead to the widest possible availability of expert health care. In some nations, poorer, rural people do not know of even the existence of some diseases; were they to find out, they might stage large-scale protests against their government for having previously withheld that information. At the very least, then, it is clear that the NIIO/NIEO link is too narrow and subjective.

Numerous responses have been offered to the NIIO proposals. Three which merit special attention are the Soviet, European and United States responses. The Soviets strongly support the NIIO because "a country enjoying 'unlimited' freedom limits the freedom of others. Absolute freedom to inform other countries irrespective of their desires compromises their freedom."⁴⁰ All nations must be free to admit or reject information and must not, therefore, be forced to accept the information which is given them by Western news agencies. The Soviets claim that the Western "term 'free flow of information' may in fact be a synonym of cold war, because in this kind of war, it is words, not guns, which carry on the combat."⁴¹ Consequently, UNESCO's 1978 Mass Media Declaration, which used the phrase "free flow and a wider and better balanced dissemination of information,"⁴² represents a victory for the East-South alliance which supports NIIO.

The European view of NIIO holds that the chief accomplishment of the Mass Media Declaration is that all members of the international community, but particularly the Western bloc, now recognize UNESCO as the matrix for debate over communication. On the other hand, because the document did not embody some of the more extreme NIIO demands such as licensing journalists, the 1978 UNESCO Conference was a "setback for the Soviet Union."⁴³

The extreme United States response holds that the argument that a state can shape opinions is seductive; the premise that a link exists between news and development, an assumption which lies at the heart of NIIO claims, remains unproven. The polar case of the Soviet Union illustrates that in a country where the press is completely con-

40. Androunas & Zassoursky, *Protecting the Sovereignty of Information*, 29 J. Com. 186 (1979).

41. *Id.* at 187.

42. The Declaration of Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, The Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War, UNESCO Res. 4/9.3/2, 20 UNESCO Gen. Conf. Res., UNESCO Doc. 20C/Resolutions at 100-04 (1978).

43. Righter, *Who Won?*, 29 J. Com. 192 (1979).

trolled, there is no guarantee of economic success. Another complaint against the NIIO is that it demonstrates a "clear bias against private sector involvement in communications."⁴⁴ The statism inherent in the NIIO, according to the extreme United States position, conflicts with⁴⁵ Article 19 of the UN Declaration of Human Rights.⁴⁶ Finally, this argument maintains that the NIIO is an attempt to take advantage of the tensions necessarily present in an open Western system of information and that it is a blatant ploy to prejudice Western interests.

A more moderate United States view argues that the NIIO is valid to the extent that it reflects legitimate grievances about cultural dependence.⁴⁷ This opinion points to what it sees as a justifiable pluralism in the values of the contemporary world. The proponents of this opinion recognize that imbalances exist in the extent to which people are free to communicate effectively with one another. In addition, this moderate response suggests that particular NIIO claims be examined more carefully and that the entire proposal not be dismissed out-of-hand. It has become apparent that "the Third World means to have its news heard and understood wherever it chooses."⁴⁸ Both the extreme and the moderate United States responses object to the deprivation of the free flow of information.

As a response to the NIIO, the West has begun to formulate claims of its own in regard to communication. These demands tend to favor a reassertion of the relevant portions of the U.N. Universal Declaration of Human Rights⁴⁹ and the International Covenant on Civil and Political Rights,⁵⁰ while taking into account some of the more legitimate claims of the Third World. The Western claims are not as well developed as the claims of the NIIO because communication is not as important an issue in the West as in the Third World, and because Western responses have only recently begun to take form. The West

44. Theberge, *UNESCO's "New World Information Order": Colliding with First Amendment Values*, 67 A.B.A. J. 714, 716 (1981).

45. *Id.* at 718.

46. U.N. Universal Declaration of Human Rights, *supra* note 14. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." *Id.*

47. Rutkowski, *More on the "New World Information Order"*, 67 A.B.A. J. 1274 (1981).

48. Sussman, *The Western Media and the Third World's Challenge*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 344, 345 (J. Richstad & M. Anderson eds. 1981).

49. U.N. Universal Declaration of Human Rights, *supra* note 14.

50. International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI), U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

has long considered freedom of expression an inalienable right. It is protected by most, if not all, Western constitutions, and the idea that communication can interfere with another's security—except in the most extreme circumstances—has never been taken too seriously. Now, in response to Third World claims, the West has had to crystallize a response.

III. WORLD CONSTITUTIVE PROCESS

Thus far, a discussion of the demands various groups are making in respect to communication has been presented. This section will describe the institutions already in place to resolve the competing claims of the West and South. Space limitations preclude a detailed study of the whole constitutive process. Therefore, those elements of the constitutive process which are of greatest importance to the trade-off between freedom of communication and danger to Third World development will be highlighted.

As outlined in the MacBride Report⁵¹ and elsewhere, one can identify quite a few participants in the communication process.⁵² First is the individual who participates because of his desire to know, impart and discuss information. Without this information, the individual cannot be an informed citizen and thus may be alienated from the community's political process. Second, groups and voluntary organizations, both legal and illegal, provide fora for debate.⁵³ An example of this kind of participant is an international writers' network. Third are communities, such as the nation-state, which are smaller than the global community. The reactions generated in these groups as they receive and digest information help to determine global community policies. A fourth set of participants is private and public institutions. Included prominently among private institutions are the mass media, particularly such transnational news agencies as the Associated Press. Closely related is the fifth participant, national and transnational corporations, especially those producing software and advertising. Sixth are various groups of professionals, such as journalists or academicians. Because journalism is increasingly recognized as a legitimate profession throughout the world, there is a growing emphasis on higher professional standards. The following discussion will focus on transnational

51. MACBRIDE REPORT, *supra* note 1, at 112-22.

52. *Id.* at 284-87. In the report, four major models for the study of communication are listed. These four models are derived from: (1) the concept of the discrete communication system; (2) psycho-social inspiration; (3) cultural or anthropological inspiration; and (4) "institutional" approaches inspired by the political sciences. *Id.*

53. *Id.* at 114.

news agencies (TNNAs), journalists, academicians and nation-states because of their predominant role in the communication process.

TNNAs are an important participant if only because of their size. The main TNNAs are Associated Press, United Press International, Reuters and Agence France-Presse. AP and UPI are headquartered in the United States, Reuters in England and AFP in France. One example will illustrate the operational scope of these organizations. AP has an annual budget of \$100 million. It maintains 80 United States-based correspondents and 750 correspondents abroad. More than 1300 United States newspapers and more than 3000 radio and television stations subscribe to it.⁵⁴ Because of their size, during the 1970's these agencies transformed themselves from transnational news agencies to transnational information services.⁵⁵ They broadened their base from news of day-to-day crises and events to include issues which are of wider scope but still immediate importance.

The stated goal of each TNNa is objectivity. As should now be apparent, interpretations of "objectivity" vary around the globe. Third World criticism of TNNAs centers not only on the objectivity issue, but also on their impact and control over the international information flow and on their use of common resources such as telephone wires.⁵⁶ They have come in for especially harsh criticism in regard to the perceived imbalance in information flow; they are accused of flooding the Third World with the news they gather to cater to their more lucrative Western markets and of not presenting the West with a balanced picture of the Third World.⁵⁷ Particular Southern complaints are that young, inexperienced reporters are often assigned to the Third World, and that local stringers are frequently incompetent and poorly paid.⁵⁸ In addition, Western reporters tend to travel in packs to places of crisis and thus neglect events in Third World nations not experiencing crises. The South has also protested what it sees as a gap purposely created by the TNNAs between themselves and the national news agencies.⁵⁹

The agencies have been victims of physical harassment. There have been cases of deportation and imprisonment of correspondents as

54. Rosenblum, *Reporting from the Third World*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 221, 224-25 (J. Richstad & M. Anderson eds. 1981).

55. Richstad, *Transnational News Agencies: Issues and Policies*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 242, 255 (J. Richstad & M. Anderson eds. 1981).

56. *Id.* at 246-47.

57. *Id.* at 246-50.

58. *Id.*

59. *Id.*

well as attempts to browbeat or punish them for writing stories that have not portrayed the government in a favorable light.⁶⁰ The TNNAs refute the Third World claim that they "write off" the Third World in order to increase their profits; UPI has not run a profit for the past twenty years.⁶¹ Although other TNNAs have been more successful financially, they still lose money covering the Third World.⁶²

The people who actually gather the news for the TNNAs and smaller agencies are also important participants in the communication process. Three broad questions have been raised concerning journalists as they gather information.⁶³

The first relates to the reporter's physical protection, which the West has long considered the obligation of the host country. The Soviets have taken this idea and expanded—or corrupted—it so that journalists, in its view, should be licensed. Obviously, host governments would have great leeway in choosing whom to license and could thus influence the news reporting of the West. Western agencies and journalists strongly oppose licensing.⁶⁴

The second question deals with the professional ethics of the press. To what extent should the press be self-regulating? The precedent for press codes began at the Pan-American Press Conference of 1926.⁶⁵ These voluntary codes have usually included general statements about objectivity, truthfulness and the necessity of freedom of information. While many Westerners feel that these press codes would solve a large number of the problems raised by NIIO claims, the new order's proponents view the codes as merely one possible solution.

The third concern regarding journalists is the right of correction and reply. Although the right to challenge and respond to news reports exists in Europe, it is a source for debate in other countries. Again, the question of cultural biases is raised in the context of what constitutes a "wrong" or "inaccurate" story. At the very least, however, it seems clear that the right to communicate must include the right to correct.

Academics, as a group, include university scholars, members of "think-tanks" and conceivably even scholars like writers or poets who are in exile or are otherwise *persona non grata*. They participate in the communication process by taking responsibility for discovering or syn-

60. MACBRIDE REPORT, *supra* note 1, at 235.

61. Tremaine, *Problems of International Coverage*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 277 (J. Richstad & M. Anderson eds. 1981).

62. See Fuller, *AP: Covering the World*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 271, 273 (J. Richstad & M. Anderson eds. 1981).

63. MACBRIDE REPORT, *supra* note 1, at 234-49.

64. See *id.* at 237-38.

65. MACBRIDE REPORT, *supra* note 1, at 243.

thesizing much of the knowledge which flows throughout the world. The question of independence obviously affects the work of these scholars. Governments can try to force them to arrive at certain preconceived ideas, as occurred in the Soviet Union during Lysenkoism.⁶⁶ For that matter, professors who are also employed by private corporations as consultants might be less than free in their ability to participate in the communication process. The fact that academicians may be exiled or subjected to physical violence shows that they are susceptible to pressures which attempt to limit their freedom to create information.

A fourth participant in the constitutive process is the nation-state. Governments participate by legislating rights of communication, by using communication resources in central planning, by assigning facilities to private firms for telecommunications and by publicly controlling the media.⁶⁷ In the Soviet Union, the press—newspapers, radio, television—is completely government-controlled; in South Africa, all of the Afrikaans newspapers are under government supervision. While central control of the media can avoid the problem of excessive commercialization, it obviously can also lead to great restrictions on the flow of information. All governments—dictatorial and democratic—are involved to some extent in the communication process as they limit access to information which is harmful to national security.

Each of these four participants maintains its own perspective regarding the communication process. The news agencies have become increasingly vocal in response to the Third World criticism described above. They argue that their role and capabilities are often misunderstood in the Third World even though they openly admit to practicing a "journalism of exception."⁶⁸ Because it is physically impossible for them to cover all the news around the world, they must concentrate on the news which will sell in their primary markets; namely, the West. TNNAs identify largely with Western communication policies, and while claiming objectivity, cannot help following some degree of Western bias, if only because of their Western ownership and staff.

Journalists and reporters demand the freedom to gather information and to avoid harassment and torture in performing their jobs. They see themselves as ombudsmen for the citizenry as a whole, and believe that their rights are simply extensions of the rights of individu-

66. Lysenkoism refers to a revolt against intellectualism and science, particularly the science of genetics, that arose in Soviet Russia in the 1930's. It is named for its progenitor, Trofim D. Lysenko, President of the Lenin All-Union Academy of Agricultural Sciences and Director of the Institute of Genetics. 17 *ENCYCLOPEDIA AMERICANA* 892 (1978).

67. MacBRIDE REPORT, *supra* note 1, at 253-75.

68. Richstad, *supra* note 55, at 253.

als. Nonetheless, journalists are responsible for considering the rights of others and for respecting legitimate national security claims. Those journalists who work for Third World national news agencies may find themselves in a slightly different position, as their governments may be more cooperative; however, they are usually as unable as Western reporters to obtain (with the right to publish) sensitive information.

Academicians as a rule demand the broadest possible freedom of information and the broadest possible freedom from outside interference. Their perspectives are at times unclear: when working for the government, they are faced with the dilemma of obtaining and using full knowledge, and of not finding or discussing information which would be harmful to the government supporting them.

Nation-states demand the freedom to improve their own position or the position of their allies. They may, therefore, be forced to restrict the flow of information and to identify themselves with the more repressive elements of society. Political, economic and moral factors can all color the way a government behaves.

UNESCO is important as an arena for debate and development of policies. It is a successful forum because it can work with national groups and specialized institutions, and has especially wide access to communication data.⁶⁹ Because it is always studying communication issues, its actions and decisions can go beyond mere reaction to crisis events. Western groups such as TNNAs have sharply criticized UNESCO for having become a propaganda forum for the Third World. While this belief may be justified, the situation is unavoidable because the Third World is the dominant bloc in the United Nations itself.⁷⁰ UNESCO in fact limits the number of participants in the communication debate because only nation-states are allowed to take part in UNESCO fora and discussions.⁷¹ Private individuals and organizations are more or less excluded from the decision-making process.

Clearly, UNESCO is currently the only matrix for international debate about communication. No other organization is capable of legitimately making communication policy for the world. It considers communication from the point of view of enlightenment as the base value. However, one must consider the very real possibility that the matrix of debate will shift. The most likely new arena is the United Nations General Assembly. Such a result would serve to focus more world at-

69. Richstad & Anderson, *supra* note 24, at 31.

70. The newly emerged nations of Africa and Asia now constitute a majority of the United Nations General Assembly. 27 *ENCYCLOPEDIA AMERICANA* 450 (1978).

71. UNITED NATIONS, *EVERYMAN'S UNITED NATIONS: A COMPLETE HANDBOOK OF THE ACTIVITIES AND EVOLUTION OF THE UNITED NATIONS DURING ITS FIRST TWENTY YEARS, 1945-1965*, at 503-04 (8th ed. 1968) [hereinafter cited as *A COMPLETE HANDBOOK*].

tention on this issue. Because the General Assembly is the actual legislative branch of the U.N.⁷² and is not a U.N. subsidiary as is UNESCO,⁷³ individuals might have the chance to play a greater role in resolving communication issues, if only because some channels do exist for direct individual appeal to the U.N. In addition, because the General Assembly is a parliamentary rather than education-oriented body, it will consider the issue from a broader perspective. Power and respect could join or replace enlightenment as base values. Were the matrix of debate to shift completely out of the U.N. to a separate body devoted exclusively to studying communication problems, the possibility exists that groups indirectly affected by the communication process, such as peace movements, will be able to become more involved.

At the outset it was explained that the communication process contains several base values. This conclusion is apparent from studying the base values of the four important participants. TNNAs, journalists and academicians all devote their efforts, at least superficially, to improving enlightenment. All governments which have signed the Universal Declaration⁷⁴ or the ICCPR⁷⁵ are expressly devoted to that goal as well. The participants do, however, have other goals. Journalists and TNNAs are also committed to power. A press which holds certain political views may try to communicate those beliefs to its audience, so that they will vote the way the press desires. Through its audience, the press can indirectly achieve political power. A state which controls the flow of information does so in order to maintain or increase its power over the population. By trying to give people access to information about themselves, their governments and the world around them, journalists, TNNAs, and academicians act with respect as their base value.

The strategies used by the various participants to achieve their goals also vary. TNNAs and journalists primarily use the ideological strategy to spread their views on the need for a free press. In print or on the air, they argue to make their perspectives known. To the extent that the governments of the states where these participants have their headquarters follow policies that reflect the desires of the press (as is the case in much of the West), TNNAs and journalists use the diplomatic and economic strategies employed by nation-states. Governments engage in diplomacy either bilaterally or in organizations like UNESCO to convince others of their views concerning communication. In providing economic and technical assistance to improve Third

72. U.N. CHARTER arts. 9-20.

73. A COMPLETE HANDBOOK, *supra* note 71, at 503-04.

74. U.N. Universal Declaration of Human Rights, *supra* note 14.

75. International Covenant on Civil and Political Rights, *supra* note 50.

World journalism, Western governments employ the economic strategy. Academicians are in a position similar to that of TNNAs and journalists. Because scholars are generally more independent from the government than is the press, however, they are forced to rely to a larger extent on the ideological strategy. None of the participants employs the military strategy in regard to communication.

One cannot be an effective decision-maker without having access to information. In a global decision-making process, the need for information and communication is still greater than in a national process because of the higher level of complexity. The communication process, therefore, is central to the whole constitutive process. The social effectiveness which lies at the heart of the constitutive process is lacking in the absence of a viable communication process.

IV. POSTULATION OF GLOBAL POLICIES

The foregoing outline of the global communication process, the claims process and the constitutive process has delimited the problem of communication. In brief, the problem is the trade-off between the broadest possible shaping and sharing of enlightenment and the damage which such free flow of information causes to developing societies.

Two polar extremes—controlled flow and free flow—have been suggested as policy alternatives.⁷⁶ An examination of these two postulations, a description of their strengths and weaknesses and a proposed compromise policy that best serves the needs of all the participants in the communication process follows.

Before discussing the merits and flaws of the controlled and free flow positions, a definition of terms is in order. "Flow" means the movement of information—words, ideas, pictures—from one part of the world to another.⁷⁷ This flow occurs in the print and broadcast media. It is subject to government limitation by censorship, harassment, or other restrictions. "Controlled" does not imply government attempts to stop the flow of information. Rather, it means limiting the types of information that are available to general audiences: what type of news, for example, people can read in their newspapers.⁷⁸ Controlled flow involves a qualitative but not necessarily quantitative restriction in the movement of information. In fact, governments which pursue controlled flow may make a conscious attempt to maintain the same number of books or newspapers or television programs so that there is no apparent reduction in the amount of information people receive. On

76. See Sussman, *supra* note 48, at 348-51.

77. See generally MACBRIDE REPORT, *supra* note 1, at 137-44.

78. See *id.* at 138.

the other hand, "free" flow implies freedom of choice for the audience in choosing their sources of information. No outside interference can stand in their way by limiting the choices available to them. Obviously, free flow is not absolute because of legitimate national security needs. Free flow is the closest possible situation to that where all desired information is available openly.

The proponents of limited or controlled flow believe that the free flow of information helps only industrially developed nations.⁷⁹ Third World nations should, therefore, impose controls on the flow of information and culture to avoid undue Western influence, to increase their own capabilities of information production and to force themselves to train needed media personnel. These proponents also argue that information-exporting countries should, either by voluntary decision or by international agreement, restrict the flow of information from their countries. They believe that lesser developed countries should do research on gathering information. Last, they claim that developing countries should form their own regional communication agreements.⁸⁰

The NIIO claims also contain some specific policy proposals consistent with the controlled flow view.⁸¹ With respect to developing nations, these goals include exchanging information on as broad a scale as possible; paying particular attention to the work of national news agencies; training professionals; "inculcating the values of the new international economic order and the new world information order"⁸²; democratizing information resources and structures; and establishing "a free and equitable flow between developed and developing countries, from the point of view of content, volume, and intensity."⁸³ With respect to the already-developed nations, some of these policy suggestions involve calling public attention to growing world interdependence; "taking a more objective approach to the aspirations and concerns of the developing nations"⁸⁴; using more space in Western newspapers for articles about development; making certain that journalists respect the laws and customs of the host country; and giving special attention to the expanding national news agencies. Regarding international organizations, suggested policies aim at instituting a tax in the developed countries to finance the UNESCO copyright fund;⁸⁵ helping to fund training

79. See *id.* at 141-42.

80. Rao, *Information Imbalance: A Closer Look*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 140, 149-50 (J. Richstad & M. Anderson eds. 1981).

81. Masmoudi, *supra* note 26, at 178-85.

82. *Id.* at 179.

83. *Id.*

84. *Id.* at 180.

85. *Id.* at 182.

centers and coordinating the curricula of mass media institutes; helping to create training centers for Third World nations to produce radio and television programs "designed to serve the aims of the New International Economic Order"⁸⁶; and devising satellite policies which will respect the sovereignty of each state.

The primary benefits of the controlled flow solutions are their consistency and single-mindedness. However, the first weakness of the limited flow approach lies in its very consistency: it simply does not take into account the demands of developed nations. A second weakness is that some of its suggested policies are much like asking certain Western organizations to sign their own death warrant. For example, the *Washington Post* should not be forced to print articles about highway-building in Uganda, a topic which is of importance and interest to the Third World, but of almost no interest to the *Post's* readership. It is, at the very least, presumptuous of Third World nations to tell the *Post* to sacrifice its profits just to satisfy the Third World view of fairness, a view based on very different norms from the American conceptions.

Additionally, some of the proposals are simply impractical. The tax on Western nations to administer the UNESCO copyright fund will primarily benefit the South. Should not the South, then, pay some of the tax? The implicit or explicit suggestion for the developing countries to restrict information in order to return to their historical past is unreasonable because it is unrealistic to try to turn back the clock. Without question, many elements of the native cultures legitimately deserve preservation, but this need not entail complete isolation from Western influences. The most serious weakness in these proposals is that they unquestionably limit the freedoms of speech and expression which are expressly guaranteed in the Universal Declaration⁸⁷ and in the ICCPR.⁸⁸ Placing barriers on the flow of information necessarily limits that flow and, therefore, restricts the chance for people to engage in the broadest possible shaping and sharing of enlightenment. No amount of "verbal acrobatics"⁸⁹ can answer this charge because a reduced flow of information—even if that information is biased—will surely reduce the ability of people to form opinions freely.

In contrast to this controlled flow approach, the simple free flow argument is that there should be no restrictions on communication. This argument, however, does not account for the legitimate griev-

86. *Id.* at 183.

87. U.N. Universal Declaration of Human Rights, *supra* note 14.

88. International Covenant on Civil and Political Rights, *supra* note 50.

89. Swinton, *A First World View*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* xi, xv (J. Richstad & M. Anderson eds. 1981).

ances, as defined earlier, of the Third World. A more sophisticated free flow policy would first stress the need for developed nations to make clear their commitments to free flow and to doing all that is necessary to preserve it. To further this policy suggestion, Western nations would also grant assistance to developing nations in order to broaden literacy and to help build up national and regional news agencies. In addition, the example of the English Thomson program to train journalists for the Third World, deserves expansion.⁹⁰ The journalistic community itself should accept the burden of creating standards of fairness which take into account the validity of Third World complaints. The theory behind these policy suggestions is, to use a cliché, that small steps will become big strides.

The primary strength of the free flow argument is that it recognizes several facts which are unpleasant, but necessary for the Third World to accept. First, by focusing on the internal communication process of each nation-state, this policy acknowledges that international flow of information can arise only among nations which have well-developed internal flows. Mr. Long of Reuters has commented: "You cannot have repression at home and enlightenment abroad."⁹¹ Second, the free flow position recognizes the naiveté in expecting a "balanced" flow of news.⁹² Unevenness is characteristic "not only of news flow, but of water flow, oil flow, money flow, population flow, and food flow."⁹³ A related strength of the free flow argument is that it points out that news is by nature piecemeal and exclusionary; it is unrealistic for the Third World to expect the Western media to devote the same attention to the Third World as it devotes to itself.

The most significant weakness of the free flow policy is its open-endedness. The proposal clearly supports free flow as a principle to guide communication; however, this argument does not deal successfully with the problem of "swamping" or volume imbalance in information flow. The steps suggested by Swinton⁹⁴ and others⁹⁵ to increase literacy do not really solve this problem in the short- or medium-term. In brief, the free flow proposal has lost the sense of balance which was present, in a most exaggerated way, in the controlled flow proposals.

90. Richstad & Anderson, *supra* note 24, at 11.

91. Long, *Reuters View on UNESCO*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 274 (J. Richstad & M. Anderson eds. 1981).

92. Merrill, *A Growing Controversy: The "Free Flow" of News Among Nations*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 151, 154 (J. Richstad & M. Anderson eds. 1981).

93. *Id.* at 156.

94. See generally Swinton, *A First World View*, *supra* note 89, at xi-xv.

95. See, e.g., Rao, *supra* note 80, at 141.

Also, free flow is somewhat unclear on how far the West should go to help the Third World. The suggestions for improvement offered by free flow proponents are inadequately integrated with their strong position supporting the free flow of ideas.

To summarize, the Third World view holds that "[t]he power to inform is one of the keys to power as such"⁹⁶ while the Western view argues that "[w]ith all its real and alleged faults, a free press is infinitely better than any alternative."⁹⁷ From the global perspective offered at the outset, free flow appears to be, despite its weaknesses, a stronger proposal than controlled flow. The policy which this paper will now outline will, therefore, incorporate much of the free flow argument while taking into account the strong points of the limited flow policy, to a great degree neglected in the free flow argument. This compromise policy is based largely on the proposal made by the Netherlands Government in its report, *Human Rights and Foreign Policy*.⁹⁸

At the center of this policy lies the notion of a "free and balanced flow of information."⁹⁹ This concept implies both the free flow of information and the "availability of information which is as broad and many-sided as possible."¹⁰⁰ The absolutely critical point is that "balance" implies many-sidedness and choice, without any limitation. Achieving balance, therefore, requires broadening rather than contracting information flows. In view of this definition it is advisable to discard the word "balance" because what is being attempted is a broadening of the choice of sources of information offered to people. The broadest number of options gives people the greatest opportunity to improve their enlightenment, power and respect. "Free and balanced flow," as an appellation, is risky because of its varying connotations. While slogans and buzzwords are invariably dangerous, in the interest of ease of exposition the term "broadened flow" will be used to describe the policy suggested in this note.

Governmental activity should be aimed at promoting a broadened flow by "preventing concentration and the formation of monopolies in the provision of information."¹⁰¹ One way to achieve this goal would be to give governmental assistance to many media groups. Broadened flow recognizes the legitimate grievances entailed in cultural dependence, and suggests in response, policies such as helping the Third World set

96. N.Y. Times, Nov. 28, 1982, § 1, at 3, col. 1.

97. *Id.*

98. MINISTRY OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS, *HUMAN RIGHTS AND FOREIGN POLICY* 123-30 (1979).

99. *Id.* at 125.

100. *Id.*

101. *Id.* at 126.

up and advance its own regional or national information-gathering and information-disseminating systems. In addition, giving funds to UNESCO-sponsored programs concerning information, as well as supporting private organizations dedicated to solving the communication problem are other examples of the commitment to broadened flow. It should be stressed again that this understanding of broadened flow should in no way "infringe freedom of information."¹⁰² Policies such as censorship or licensing journalists, therefore, are not viable options. Attempts to impose standards like "objectivity" should be wholeheartedly resisted since they are tantamount to censorship.

The cautious approach which broadened flow takes toward the NIIO/NIEO linkage shows the emphasis it places on the base values of the communication process. It attempts to concentrate on information and to solve the communication problem, without clouding the picture by bringing in other values and associated problems.

The policy outlined here accepts the premise of the proponents of controlled flow which holds that "the emancipation of the developing countries with regard to news communication and culture can be viewed as a natural and necessary complement to their political and economic emancipation."¹⁰³ It avoids the danger of limiting the spread of enlightenment and the illegitimate linkage of communication base values exclusively to wealth by strongly advocating free flow: "Free access to information is essential if freedom of opinion is to be exercised, since a lack of information is an impediment to forming a considered opinion."¹⁰⁴ Furthermore,

[e]fforts to bring about a more balanced international situation in the field of information and communication should accordingly be directed towards widening the realization of freedom of information in the world and must on no account be permitted to lead to an actual restriction of that freedom by impoverishing and politicizing the international provision of news.¹⁰⁵

V. PAST TRENDS AND CONDITIONS

The compromise formula of "free and balanced flow," to say nothing of the meanings attached to these terms, has rarely, if ever, been the rule in past decisions concerning communication policy. To understand past trends, it is necessary to separate customary international

102. *Id.*

103. *Id.* at 127.

104. *Id.* at 125.

105. *Id.* at 128.

law as embodied in United Nations documents from more recent decisions by U.N. subsidiaries, notably UNESCO.

The United Nations has strongly established freedom of communication as a key human right. At its first session in 1946 the General Assembly had already agreed that this freedom is "the touchstone of all the freedoms to which the UN is consecrated."¹⁰⁶ This freedom was definitively stated as a human right in the 1948 U.N. Universal Declaration of Human Rights, article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.¹⁰⁷

Article 19 of the International Covenant on Civil and Political Rights of 1966 restates the earlier assertion with the following limitations:

For respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals.¹⁰⁸

By 1966, the membership of the U.N. was substantially different from its membership in 1948. Many former colonies had become independent states and thereby became voting members of the U.N. Because discussion of the information issue "had petered out"¹⁰⁹ in the U.N. by the middle 1960's and because UNESCO is, by charter, mandated to study enlightenment, debate moved to UNESCO, which since the 1950's had devoted itself to problems of specific interest to the Third World. This organization has long been sympathetic to an important role for central authority in the state.¹¹⁰ At the 1972 UNESCO General Conference, the Soviets offered a draft statement suggesting vastly increased government control over the media.¹¹¹ While this proposal was soon put to rest because of its obvious unacceptability to the West and much of the Third World, the non-aligned nations which dominate UNESCO began to crystallize their own views on the subject of communication. In 1973 at Algiers, they proposed "reorganiz[ing] existing communication channels which are the legacy of the colonial

106. *Id.* at 123.

107. U.N. Universal Declaration of Human Rights, *supra* note 14.

108. International Covenant on Civil and Political Rights, *supra* note 50.

109. MINISTRY OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS, *supra* note 98, at 128.

110. Theberge, *supra* note 44, at 715.

111. *Id.* at 716.

past. . . ."¹¹² In 1975 a group of Third World journalists underscored the need for more reporting about the Third World, and for linking NIIO and NIEO claims.¹¹³

The Helsinki Agreement of 1975¹¹⁴ was the first step to modify the old U.N. formulas. The Agreement's final act¹¹⁵ aimed "to facilitate the freer and wider dissemination of information of all kinds, to encourage cooperation in the field of information and the exchange of information with other countries. . . ."¹¹⁶ Hinted at in the Agreement is the need for Western help in achieving balanced flow.¹¹⁷ One year earlier, UNESCO moved away from the radical Soviet view. At the 1974 UNESCO General Conference¹¹⁸ free and balanced flow appeared as a goal for the first time.¹¹⁹ Although conflicting Western, Soviet and Third World views clashed at the UNESCO Nairobi Conference of 1976,¹²⁰ the participants there agreed to devise a Mass Media Declaration to appear in 1978.¹²¹ This Declaration made free and balanced flow a world norm. It stated the policy goal of "a free flow and wider and better balanced dissemination of information."¹²² It is safe to say that the rapid expansion of the Third World role in the U.N. and its subsidiaries, combined with firm Western resistance to excessive encroachments on free flow, brought about the compromise formula. The report of the MacBride Commission has gone so far as to offer suggestions for implementation of the new formula.¹²³

It is important to realize that despite apparent agreement on free and balanced flow as a policy, there is broad disagreement on a definition of terms. This note defines "balanced" as many-sided but not in

112. Richstad & Anderson, *International News: Looking Ahead*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 402, 433 (J. Richstad & M. Anderson eds. 1981).

113. Statement by the Participants in the Dag Hammarskjold Third World Journalists' Seminar, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 435-39 (J. Richstad & M. Anderson eds. 1981).

114. 14 I.L.M. 1292-1325 (1975).

115. *Id.* at 1292.

116. *Id.* at 1315.

117. *Id.* The Helsinki Agreement recommends that those countries with advanced communications assist the communications development in other countries. *Id.*

118. Theberge, *supra* note 44, at 716.

119. *Id.*

120. *Id.*

121. *Id.*

122. The Declaration of Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War, *supra* note 42.

123. MACBRIDE REPORT, *supra* note 1, at 254-72.

any way limited. In fact, most of the Third World countries who dominate UNESCO have a conception of "balance" which leans more heavily toward control. This is illustrated by the Third World demand in the Masmoudi proposals for balance in *volume* of communication.¹²⁴ Clearly, achieving such an equality would require that limits be placed on the flow from the West, at least in the short- and medium-term, until the South can develop further its own information flows.

There have been several broad developments in the communication process aside from those trends evidenced by relevant international documents. The very fact of participation of nearly all the world's countries in the constitutive process of communication testifies to the trend of democratization of the process. Acceptance of the free and balanced flow formula, however interpreted, has necessarily created broader access. It has increased the number of participants and alternative channels of flow, and has provided more abundant information than existed previously. These advances point to a second broad trend: greater cooperation, especially between the First and Third Worlds. For example, without Western financial and technical assistance, the Third World would have been unable to create its own news bureaus.¹²⁵ TNNAs are now paying more attention to their national and regional counterparts. Western governments are becoming more generous in their support of UNESCO-sponsored training programs.¹²⁶ Having realized that some Third World claims are legitimate, the West has apparently decided that antagonism will not solve the disagreements over communication. The realization that information is a social commodity underlies this greater cooperation. It is interesting that cooperation within the Third World has also markedly increased in recent years.¹²⁷

Nevertheless, an analysis of past trends would be lacking if it did not include the "jarring note"¹²⁸ sounded by some Westerners, that UNESCO has tried to use its international influence to control the media. Certain media executives like Mr. Long of Reuters have been especially critical of UNESCO's policy proposals.¹²⁹ This "jarring note" is important because it illustrates a fundamental disagreement of an im-

124. Masmoudi, *supra* note 26, at 178.

125. See generally Anderson, *Emerging Pattern of Global News Co-operation*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 317-43 (J. Richstad & M. Anderson eds. 1981).

126. See Richter, *World Communication Issues*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 56, 63 (J. Richstad & M. Anderson eds. 1981).

127. Anderson, *supra* note 125, at 318.

128. Richstad & Anderson, *supra* note 112, at 425.

129. Long, *supra* note 91.

portant portion of the world with the developments in international treatment of communication. Even accounting for this dissatisfaction, it is indisputable that the overriding trend in the global communication process is the "politicized communication environment,"¹³⁰ which is evidenced by the fact that political bodies like UNESCO debate communication problems.

The conditions causing these trends should take into account the demands, identifications and expectations of the global community. Unquestionably, nations and peoples have come to voice demands for broader participation in all value and decision processes. The documents issued by international organizations of all types illustrate that these demands are receiving serious attention. Identifications, however, remain strongly regional. Thus, it is not surprising that the NIIO claims were advanced and accepted by a large proportion of the South. A few people from each part of the world, though, have attempted to surmount their regional identifications in order to achieve globally acceptable solutions. The members of the MacBride Commission fall in this category.¹³¹ The Third World has become more and more confident that its demands will be met. Such expectations grew rapidly after the discovery and use of the "oil weapon" in the early 1970's. Some Westerners have resigned themselves to the fact that U.N. decisions now tend uniformly to support Third World claims simply because of the constitution of U.N. membership.

VI. FUTURE TRENDS

Should the present trend toward free and balanced flow continue, the "immediate outlook seems to be for the growth of alternative structures for news and communication that meet, particularly, the nonmarket-oriented needs of the developing countries."¹³² Specifically, this will mean further expansion of national news agencies, more news pools such as the Inter Press Service, more government assistance from developed countries, a greater role for the World Press Freedom Committee and similar private monitoring groups and in general, more North-South dialogue with the realization that past crisis planning has been a failure. These trends began, to some extent, in the late 1970's. Their extension seems guaranteed by the fact that already for four years the free and balanced flow formula has been in effect and therefore is becoming an accepted doctrine of international law. Nonetheless, the need for new policy initiatives is made clear by the unfortu-

130. Richstad & Anderson, *supra* note 112, at 403.

131. MACBRIDE REPORT, *supra* note 1.

132. *Id.* at 412.

nate fact that the World Press Freedom Committee, a Western organization, has raised less than a million dollars since its inception in the early 1970's.¹³³

The trends discussed above are merely short-term and may describe the situation for the next five to ten years. The best way to study long-term trends is to follow the Lasswell model and set up developmental constructs.¹³⁴ The two polar future scenarios are the oligarchic and participatory model for the mass media. The oligarchic model stresses a monolithic media which is "power-oriented and designed to control and manipulate people."¹³⁵ This would describe a centrally-controlled communication system, "the type of system that would generate the kinds of Third World complaints that arose in the 1970's."¹³⁶ The participatory model, in contrast, stresses diffused control over the press, with differentiated senses of identification and of the common interest. In addition, this construct posits the dispersal of intermediate technology throughout the world. Because neither model provides a satisfactory solution, room for change lies between the two outlooks. Such change arguably can take two forms: cosmetic and structural.¹³⁷

Cosmetic change, because it is not definitive, ultimately must be followed by structural change. The cosmetic changes can seem permanent, though, if the frame of reference used to observe the process is of long enough duration. Cosmetic change tries to deal with problems pragmatically and consecutively, rather than contextually. It fosters "benevolent paternalism"¹³⁸ because it necessarily concentrates on short-term changes and does not try to make major adjustments in the social order.

Structural or neo-Marxist change views communication in its broader social, political or historical context. It focuses on the problem that exists by virtue of the fact that although communication is by definition a horizontal process, it is organized vertically. Structural change proponents argue that the results of such change are more conclusive and long-term than those produced by cosmetic change.¹³⁹

Cosmetic change generally takes the form of increasing financial aid from the North to the South for communication or for creating

133. *Id.* at 415.

134. *Id.* at 423-26.

135. *Id.* at 424.

136. *Id.*

137. Harris, *News Dependence and Structural Change*, in *CRISIS IN INTERNATIONAL NEWS: POLICIES AND PROSPECTS* 356, 358 (J. Richstad & M. Anderson eds. 1981).

138. *Id.* at 359.

139. *Id.* at 361.

training programs for Third World journalists. An example of structural change is the development of organizations like the Inter Press Service (IPS), which is officially a nongovernment organization.¹⁴⁰ Founded in 1972, this group is a full international news service with subscribers and correspondents in Asia, Africa, Latin America and both Western and Eastern Europe. It employs two hundred full-time correspondents and publishes 90,000 words per day. It claims to report facts, in particular, facts of interest to developing nations. The IPS believes that it has made great strides in solving the horizontality problem by allowing national news agencies to link up with it under mutual exchange agreements. By "maintaining its own status as just one instrument of information among others,"¹⁴¹ it strives to guarantee a Third World communication network where all nations are represented on an equal basis.

Despite its strength, the IPS raises the question of where the difference between cosmetic and structural change lies. While Harris cogently argues that the IPS exemplifies structural change,¹⁴² more radical representatives of the Third World might argue that it is only cosmetic; that structural change can come about only by refusing to allow any Western news in this region. The cosmetic/structural prism, therefore, is unsatisfactory because of the subjectivity it entails. It also fails to relate clearly enough the changes made with the broader global policies posited. For example, the relationship between the IPS and free and balanced flow is tenuous because the cosmetic/structural mode of analysis has inadequately defined the policy desired to expand communication. The IPS can mean different things in different conceptions of balance.

VII. APPRAISAL AND RECOMMENDATION

Because of the definitional problems, what is more necessary than the consideration of cosmetic or structural solutions is an attempt to return to the basic policy in all fields of human rights: changing perspectives. This must take the form of a comprehensive perspective on communication processes and information products, with the emphasis on the broadest communication processes as a means to the most veracious information products. The first stage of that development has been completed: communication is recognized throughout the world as a legitimate human right. The second stage, convincing people of the necessity of broadened flow, has just begun. As efforts are made to

140. *Id.* at 364-66.

141. *Id.* at 366.

142. *Id.* at 364-66.

show how this policy is consistent with expanding the shaping and sharing of enlightenment, power and respect, those who engage in changing perspectives must be very clear about their interpretation of free and balanced flow. The MacBride Commission's recommendations are an attempt to implement one such interpretation.¹⁴³

The basic perspective-altering proposals the MacBride Commission suggests include linking communication to social, cultural, economic and political goals; developing national languages; making elementary education universally available; and letting each country work out its communication policies in the framework of national development policies. It would be difficult to quarrel with these suggestions because they aim at changing perspectives in the broadest way. Criticism of the MacBride Report has focused on its specific proposals to reduce commercialization in communication and to impose tariffs for news transmission. This criticism is of Western origin and concludes that the implementation of these proposals would result in a limitation of the flow of information in global communication channels.¹⁴⁴ Much of this criticism is valid. The MacBride Commission interpreted balance to stress limitation over broadening and choice. While the MacBride proposals have been successful in pointing out the existence of the communication problem, they have ignored the truism that restrictions on the flow of information reduce the opportunity for people to become enlightened, powerful and respected citizens. More communication is better than less. Once the communication flows, it can always be ignored. But if people are not permitted certain kinds of information, they cannot fully participate in the sharing of these base values and have therefore suffered a deprivation of human rights. The MacBride Commission's failure can be traced to the fact that the political ideologies of its members colored its analysis to the extent that the right to communication was subsumed into other political or economic rights, and was not treated as itself universal, inalienable and unabridgeable. The only policy which combines the concerns of cultural dependence with the necessity for the broadest possible flow of information is "broadened flow" with emphasis on many-sidedness and choice, and not on quantitative restriction aimed at artificially creating equal, balanced flows.

The nations dedicated to the definition of broadened flow as advanced in this note will have the especially difficult task of convincing other members of the world community to change their understanding of free and balanced flow. These other nations are largely committed to

143. MACBRIDE REPORT, *supra* note 1, at 253-75.

144. Richstad & Anderson, *supra* note 112, at 425.

the work of the MacBride Commission. The countries that recognize the dangers inherent in the MacBride proposals must take their case to the appropriate international fora and present their arguments with the same force and urgency as the Third World nations have done in support of the NIIO proposals. They should use all existing channels of communication to convince the rest of the world of the truth of their argument. Only in this way will perspectives be changed with the result being an expansion of human rights.

The possibility that the matrix of the communication debate may move out of UNESCO and into the U.N. General Assembly has been raised. If this develops, proponents of broadened flow would have to increase their vigilance. The larger size of the General Assembly as compared to UNESCO, as well as its greater acceptance as a legitimate legislative body, will mean that more nations favorable to the Third World understanding of free and balanced flow would participate in shaping the outcomes of the communication debate. This result would endanger broadened flow still further.

VIII. CONCLUSION

Changing perspectives in a comprehensive way, so as to affect process and product, is difficult because of its very abstractness. It is always easier to achieve passage of a specific policy than to alter an established mindset. The Third World, however, was successful in changing perspectives so that many members of the world community have come to accept their view of the communication process. There is no reason why, with hard work and imagination, countries that recognize the flaws and dangers in the existing policy cannot be equally effective in changing perspectives.

The problem of communication is soluble. The existence of a global negotiating process through UNESCO shows that the First, Second and Third Worlds are all interested in solution. For those who see that there is much to be done to increase the flow of information, the road ahead is long and difficult. But as with so many other problems, the farther away the solution appears, the more challenging and rewarding a goal it becomes.

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